

Serial No.: 10/711,769
Confirmation No.: 5768
Applicants: LINDEN, Claes-Goran
Atty. Ref.: 7298.143.PCUS00

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IN RESPONSE TO THE OFFICE ACTION:

REMARKS:

Claims 1 – 15 are pending in the present application.

REJECTION UNDER 35 U.S.C. § 102:

According to the Office Action claims 1, 2, 4-7, 9-12 14, and 15 stand rejected under 35 U.S.C. §102(b) as being anticipated by Scheuch (German Patent Number DE 10101084 A1).

In response to the Office Action applicant has considered the Examiner's reliance on Figure 5 of Scheuch (DE 10101084 A1) but respectfully disagrees that the figure meets the teaching requirements for an anticipating reference under 35 U.S.C. §102. Reliance upon inherent teachings of a drawing essentially admits that the remainder of the reference is silent regarding the claim limitation(s) at issue. To that end, evidence will be presented to show that Scheuch does not meet the requirements of an anticipating reference wherein "each and every element" of the claimed invention must be found either expressly or inherently described.

The statement of rejection included in the Office Action is reproduced below for convenient reference and to illustrate the claim limitations that Scheuch does not teach:

Scheuch discloses the foot part having the base part (6) and the housing part, the foot part having a lower end for mounting on a roof edge area on the vehicle, the foot part having a clamping plate (8c) for securing the foot part to the roof of the vehicle, the clamping plate (8c) having integral gripping (11) for gripping a body fold located under a body edge area of the vehicle, the clamping plate (8c) being in pivotable engagement with the foot part with tightening arrangement (45a) the foot part and the clamping plate (8c) each having contact faces which are located under the pivot pin (41a) when the load carrier foot is secured to the vehicle roof, wherein faces interact in a locking manner to prevent the clamping plate (8c) from turning about the pivot pin (41a) and causing the gripping (11) to lose the grip on the body fold when the clamping plate (8c) is tightened against the foot part, wherein the pivot pin (41a) is pivotably connected to the foot part each having contact located above the pivot pin (41) and which interact in a

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locking manner and which further prevent the clamping plate gripping (11) from losing its grip on the body fold when the clamping plate (8c) is tightened by the tightening arrangement (45a) See Figure 5. (Emphasis added).

Although the statement of rejection appears to follow the recitation of claim 1 of the present invention, the first phrase addressing use of a pivot pin recites, "the pivot pin," which appears to lack an antecedent. Claim 1 of the present invention includes, "the clamping plate being in pivotable engagement with the foot part by means of a pivot pin - -" (emphasis added). Thereafter, claim 1 refers to "the pivot pin" as the single component providing "pivotable engagement" between the clamping plate and the foot part of the present invention.

Omission of the antecedent from the statement of rejection suggests that the Examiner recognized the fact that Scheuch, Figure 5, requires at least three pivot pins (41a, 43a and 46b) that each provide pivotal movement of the clamping plate 8c relative to the foot part. Further Scheuch does not teach "foot part and the clamping plate (8c) each having contact faces - -." Assertion from the Office Action that Figure 5 teaches such contact faces suggests influence of the present invention to require inclusion of this statement even though no parts of Figure 5 were designated as representative of such contact faces.

When using a drawing as prior art (MPEP 2125), the picture must show all the claimed structural features and how they are put together. *Jockmus v. Leviton*, 28 F.2d 812 (2d Cir. 1928). Without identifying numerals, the evidence suggests that Schuech is silent regarding contact faces relied upon, according to claim 1 of the present invention to "interact in a locking manner to prevent the clamping plate from turning about the pivot pin - -."

A further omission from Figure 5 of Scheuch is the teaching of contact faces "under the pivot pin" and contact faces "above the pivot pin." Claim 1 of the present invention requires contact faces above the single pivot pin, "which interact in a locking manner, and which further prevent the clamping plate gripping means from losing its grip on the body fold." The required faces and their function are not taught or in any way suggested by Scheuch.

Having given full consideration to the use of Figure 5 of Scheuch as a basis for rejecting claim 1, applicant has identified at least three limitations of the claimed invention not taught by

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the reference, including "a pivot pin," and "contact faces - - (that) interact in a locking manner," which contact faces are located "under the pivot pin" and "above the pivot pin."

In view of the points made above, applicant requests reconsideration and withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b). Reconsideration and withdrawal of rejection is also requested for claims 2, 4 and 5 that depend from claim 1 and should likewise be allowed.

Since Scheuch does not teach "contact faces" located above and below the pivot pin "to interact in a locking manner," the reference fails to anticipate independent claims 6 and 11 and claims dependent therefrom, including claims 7, 9 and 10, that depend from claim 6, and claims 12, 14 and 15 that depend from claim 11.

For the reasons given, applicant believes that claims 1, 2, 4-7, 9-12 14, and 15 should be allowed over the Scheuch reference. Request is respectfully made for reconsideration and allowance of these claims.

REJECTION UNDER 35 U.S.C. § 103(a):

Rejection of claim 3, claim 8 and claim 13 under 35 U.S.C. §103(a) was included in the Office Action based on the assertion that these claims are unpatentable over Scheuch (German Patent Number DE 10101084 A1) in view of Bronson (U.S. Patent Number 3,638,844).

Applicant requests that the Examiner reconsider and withdraw the above rejection of the claims in view of the following:

In the previous section, evidence has been presented that shows that Scheuch fails to teach all the limitations of claim 1, from which claim 3 depends, or claim 6 from which claim 8 depends, or claim 11 from which claim 13 depends.

Failing to provide basis for rejection of independent claims of the present invention, Scheuch is ineffective in combination with Bronson for rejection of claims that depend from patentable claims. Independent claims 1, 6 and 11 are respectfully asserted to be allowable. Dependent claims 3, 8 and 13 should likewise be allowed.

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Given the above, Applicant requests that the rejection of claims 3, 8 and 13 under 35 U.S.C. §103(a) be reconsidered and withdrawn and that the Examiner indicate the allowance of the claims in the next paper from the Office.

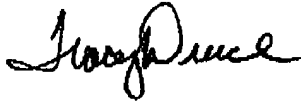
Applicant has made an earnest attempt to respond to all the points included in the Office Action and request is respectfully made for reconsideration of the application and notification of allowance of claims 1 - 15 in the next paper from the Office.

The undersigned representative requests any extension of time that may be deemed necessary to further the prosecution of this application.

The undersigned representative authorizes the Commissioner to charge any additional fees under 37 C.F.R. 1.16 or 1.17 that may be required, or credit any overpayment, to Deposit Account No. 14-1437, referencing Order No. 7298.143.PCUS00.

In order to facilitate the resolution of any issues or questions presented by this paper, the Examiner should directly contact the undersigned by phone to further the discussion.

Respectfully submitted,



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